

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1550

74-1550

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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NO. 74-1550

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THE UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
-against-

CARMINE TRAMUNTI, et al.,  
Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DEFENDANTS-APPELLANTS' JOINT APPENDIX  
Vol. S(6)--Pages 545 to 578

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United States of America

v.

73 Cr. 1099

Carmine Tramunti, et al.,

January 16, 1974

(Proceedings resumed.)

MR. SIEGEL: Your Honor, your Honor, this is a continued motion to suppress on behalf of the defendant John Springer.

Your Honor, it is the defense's intention at this point to call two witnesses in defense of the case.

These two witnesses are in court.

Would the Court wish to have one of the witnesses excluded while the other one testifies?

MR. FORTUIN: We would move to exclude.

THE COURT: All right.

Mr. Clerk, would you be good enough to show this lady to the witness room, please.

Are you here for this motion or do you have something else?

MR. DAWSON: No. I am just here to listen to

2 this motion.

3 THE COURT: All right.

4 MR. SIEGEL: I would like to call to the witness  
5 stand Mr. Fred Springer.

6 ...

7 F R E D D I E S P R I N G E R, called as a wit-  
8 ness by Defendant John Springer, having been first  
9 duly sworn, testified as follows:

10 THE COURT: Mr. Springer, how old are you?

11 THE WITNESS: 15.

12 THE COURT: All right.

13 DIRECT EXAMINATION

14 BY MR. SIEGEL:

15 Q Mr. Springer, what do you do, do you go to school?

16 A Yes.

17 Q And where do you go to school?

18 A Truman High School.

19 Q In what grade of school are you?

20 A Tenth.

21 Q I draw your attention to the evening of December  
22 7, 1973, at your home, about 8:15 in the evening.

23 Could you tell the Court in your own words exactly  
24 what happened?

25 A Me and my little brother was sitting watching TV



2 and my mama was washing clothes.

3 THE COURT: Now this might be the first time that  
4 you have testified in a courtroom. It might be the first  
5 time that you have ever had a microphone in front of you.

6 Is it?

7 THE WITNESS: Yes.

8 THE COURT: Don't worry about it. All you have  
9 to do is sit back, relax and tell the truth. Okay?

10 THE WITNESS: Okay.

11 THE COURT: Now, you were saying that you were  
12 sitting down watching T.V. Your mother was washing clothes.  
13 Where was your mother, was she in the kitchen?

14 THE WITNESS: She was in the kitchen.

15 THE COURT: And where were you located while you  
16 were watching TV?

17 THE WITNESS: In the living room.

18 THE COURT: How old is your little brother?

19 THE WITNESS: He is seven.

20 Q Let me amend my first question. This was in the  
21 evening, on or about December 3rd, 1973.

22 Did there come a time when a bell rang in your  
23 apartment?

24 A Yes.

25 Q And what happened then? What did you do?

2 A I got up, I went downstairs and opened the door.

3 Q And what happened then?

4 A Then they came in, the police came in and showed  
5 me their badge.

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F. Springer-direct

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Q Now, when you say there were police, were they dressed in uniforms or plainclothes?

A Plainclothes. And my mother came to see who is it, and he just came up the stairs, pushed my mother aside and knocked the door down. That's about it.

Q And what happened then?

Well, let me rephrase the question.

When all this was happening where were you?

A I was outside the apartment.

Q But you were still in the building?

A Yes.

Q And you could see what was happening?

A I could see, yes, when they busted in.

THE COURT: Freddie, the bell rang. That's a bell from downstairs?

THE WITNESS: Yes.

THE COURT: All right. And you went downstairs to open the door?

THE WITNESS: Yes.

THE COURT: You don't have a buzzer that opens the door in your apartment?

THE WITNESS: The buzzer wasn't working.

THE COURT: SO you were down the basement stairs when the police entered?

1 THE WITNESS: Yes.

2  
3 THE COURT: You didn't see them break into the  
4 apartment? Is that what you are saying?

5 THE WITNESS: I seen them break in, but I don't  
6 know what happened after they got in.

7 THE COURT: Okay. After they got in you don't  
8 know what happened?

9 THE WITNESS: They arrested my father.

10 THE COURT: What did you do?

11 THE WITNESS: They told me to stand outside.

12 THE COURT: And where did you stand?

13 THE WITNESS: Downstairs.

14 THE COURT: By the --

15 THE WITNESS: By the door.

16 THE COURT: By the door of the basement stairway?

17 THE WITNESS: Yes.

18 Q Did there ever come a time when you came back  
19 into the apartment?

20 A Yes.

21 Q And what did you see happening there?

22 A They had my father in the back room.

23 THE COURT: Freddie, did you say the back room  
24 or the bathroom?

25 THE WITNESS: The back room.



2 Q And what was happening in the apartment? Were  
3 they looking in the apartment for something?

4 A Yes. They were searching.

5 Q When you say they were searching, Freddie, what  
6 specifically were they doing? Were they looking in drawers?

7 A Yes. They were looking all over the place.

8 Q Were they looking under chairs?

9 A Under chairs? No. I don't think so.

10 Q Did they take the drawers out of the dresser?

11 A No. They didn't take the drawers out.

12 Q But they looked in the drawers?

13 A They looked in my mother's closet a lot. They  
14 took all the stuff out, and they looked all over the place.

15 Q Freddie, when you went out to open up the door,  
16 you had to walk through the kitchen; right?

17 A Yes.

18 Q To go out of the apartment?

19 A Yes.

20 Q Did you see any tinfoil or white powder on the  
21 top of the table?

22 A No.

23 Q Freddie, would you lie under oath to save your  
24 father?

25 A No.

1 THE COURT: Don't even ask the question.

2 Don't answer it.

3  
4 Freddie, you have taken an oath to tell the  
5 truth, and you are here to tell the truth the best you know  
6 right?

7 THE WITNESS: Right.

8 THE COURT: All right.

9 MR. SIEGEL: I have no further questions of this  
10 witness, your Honor.

11 THE COURT: All right. Mr. Phillips, you may  
12 cross-examine.

13 MR. PHILLIPS: May I have a moment, your Honor?

14 THE COURT: Surely.

15 (Continued on next page.)

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CROSS-EXAMINATION

BY MR. ENGEL:

Q Freddie, I just have a couple of questions.  
When you were downstairs answering the door,  
how many policemen came in?

A Five.

Q Did they call come in right away?

A No, two of them was out, the man told two of them  
to go outside and make sure nobody comes in.

Q I see, and then when did you actually return  
upstairs?

A When he told me to tell the other two to come on  
in. He told me to tell the other guys outside to come on in,  
so I went upstairs.

Q And then you went upstairs with the other two  
policemen when they returned?

A Yes.

Q How did you know that your mother's closet was  
being looked into when you were out in the living room?

A Because the living room is like by my mother's  
room and they told us to sit on the couch.

Q Did you turn on the television when you returned?

A Excuse me?

Q Was the television turned on when you returned?

2 A Yes.

3 Q If you walked by from the door to the outside of  
4 the apartment to the bedroom in the rear, would you walk by  
5 and see everything in the kitchen?

6 A Yes.

7 Q You were sitting in the living room so you didn't  
8 have any cause to go back to the bedroom?

9 A The bedroom is clear, you can see right through  
10 the living room because you have no door from the living  
11 room.

12 Q One more question, Freddie.

13 In the living room, the kitchen is over here and  
14 there is a circular table in the living room, isn't that  
15 right, or a semi-circular table, a counter, sort of?

16 A In the living room?

17 Q Just outside the kitchen, a circular counter?

18 A Yes.

19 Q What was on top of that?

20 A On the counter?

21 C Yes.

22 THE COURT: Freddie, if you don't remember, just  
23 say you don't remember.

24 A I don't remember.

25 MR. ENGEL: May I have a moment, your Honor?



1  
2 THE COURT: Sure.

3 (Pause.)

4 MR. ENGEL: No further questions, Freddie.

5 THE COURT: All right.

6 Freddie, are you going back to school today?

7 THE WITNESS: Back to school?

8 THE COURT: Yes.

9 THE WITNESS: I don't think so.

10 THE COURT: Do you go to school every other day?

11 THE WITNESS: Yes.

12 THE COURT: All right, step down, Freddie.

13 (Witness excused.)

14 THE COURT: All right, counsellor, call your  
15 next witness.

16 MR. SIEGEL: I would like to call to the witness  
17 stand Mrs. Janey Barner.

18 J A N E Y B A R N E R, called as a witness, having first  
19 been duly sworn, was examined and testified as follows:

20 THE COURT: Miss Barner, I think it would be  
21 easier if you hold the microphone rather than lean into it.  
22 All right?

23 THE WITNESS: Okay.

24 THE COURT: All right, counsellor.  
25

## DIRECT EXAMINATION

BY MR. SIEGEL:

Q Mrs. Barner, do you know the accused in this case, Mr. John Springer?

A Yes.

Q I direct your attention to the evening of December 3rd at or about 8:50 in the evening.

A Yes.

Q Were you present when Mr. Springer, the accused in this case, was placed under arrest?

A Yes.

Q Approximately how long were you in the apartment before the police officers entered the apartment?

A About ten minutes.

Q Could you tell the Court in your own words exactly what happened on that evening?

A Well, I came to bring some tickets to his wife for my daughter's dance-play they was having for the Christmas holiday and to pick up some records.

Q When you entered the apartment, did you see any tinfoil or white powdery substance on top of the kitchen table?

A No, I didn't.

Q When the police entered the apartment, what



1 happened then?

2 A I was in the bedroom and I heard like a hard  
3 noise and the door was coming down and I saw them coming  
4 towards the back and they stopped like between the bedroom  
5 on the right hand side and the bathroom on the left hand  
6 side and told John to put his hands up.  
7

8 Q What happened then?

9 A Then they took him into the room and one of them  
10 told me to come into the living room and sit down. I sat  
11 in the living room.

12 Q Did you see the police officers doing anything  
13 in the apartment at this time?

14 A They went into the cabinet and they went into  
15 some cans that she had on the shelf. They opened the cans  
16 and they went into a glass closet near the living room  
17 closet and they was looking in there and pulled some stuff  
18 out of there.

19 Q Did they look into any chairs in the living  
20 room?

21 A Yes, by the window, in the cushion part. They  
22 searched around there.

23 Q Do you know if they went into the bedrooms and  
24 looked in there?

25 A I don't know because they told me to stay in the

1  
2 living room.

3 Q But did you see officers going into other rooms?

4 A They went into the room where John was.

5 Q This was after he was under arrest?

6 A Yes.

7 Q Mrs. Barner, at any time while you were in the  
8 Springer apartment, did you see any tinfoil or white powdery  
9 substance on the top of the kitchen table?

10 A No.

11 MR. SIEGEL: Nothing further of this witness,  
12 your Honor.

13 THE COURT: Mrs. Barner, there was a counter top  
14 in the kitchen or just outside the kitchen, right?

15 THE WITNESS: What do you mean, a counter top?

16 THE COURT: A semi-circular or circular counter?

17 THE WITNESS: Table?

18 THE COURT: A table, all right. Did you see any  
19 tinfoil, aluminum foil or white powder on that?

20 THE WITNESS: No, I didn't.

21 THE COURT: GO ahead, Mr. Fortuin.

22 (Continued on next page.)  
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24  
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## CROSS-EXAMINATION

BY MR. FORTUIN:

Q Is it Miss or Mrs. Barner?

A Mrs.

Q Mrs. Barner, what is your relationship to the defendant John Springer?

A Friend.

Q Just a friend?

A Yes.

Q Are you also a friend of his wife's?

A Yes.

Q You commonly do things socially with the Springers?

A Sometimes, you know, if there is a dance, we go to a dance.

Q Who is we, you and your husband and the Springers?

A No, his wife, we go to the dance.

Q Do you know the Springer children also?

A Yes.

Q And the Springers were going to attend your daughter's dance play, is that correct?

A Yes.

Q At the time you were there, you were borrowing records from them?

A Right.

Q So your relationship to the Springers is a close one, is that right, they are close friends?

A Yes.

Q You would like to help them out if you could?

A I wouldn't lie for them.

Q When you came in the apartment, where did you go?

A In the living room.

Q You were staying in the living room?

A When I came into the apartment, I came into the living room to bring the tickets to Ella.

Q What happened after that?

A I asked them, could I get the record, and she told me I could get my records. I went into the bedroom and got the records.

Q So you were in the bedroom at the time the police officers entered?

A Yes.

Q From the bedroom could you see the living room?

A Yes, you can look out.

Q How is that, that confuses me. I am concerned about the layout of the apartment.

Where are the bedrooms with respect to the living room?

A I was in the last room, the back room.



1  
2 Q Is that over a hallway?

3 A Yes, it is like, this is the hallway like this  
4 and this is the bedroom (indicating). They have got a  
5 bedroom over across this way and I was in the one over  
6 here (indicating).

7 Q I wonder if you could just draw me a diagram since  
8 we don't have a blackboard, of how the Springer apartment  
9 is laid out.

10 A I will try.

11 MR. SIEGEL: I didn't hear the witness' response  
12 to Mr. Fortuin.

13 THE COURT: She said "I know know if I can draw a  
14 diagram."

15 THE WITNESS: I can explain.

16 THE COURT: Why don't you explain and let's see  
17 if I can verbally draw a diagram.

18 When you walk into the apartment, you open the  
19 door, do you come into the kitchen or the living room?

20 A When you open the door, it is the dining room,  
21 then the kitchen and then you can walk right into the  
22 living room, too.

23 THE COURT: Okay. So when you open the door you  
24 enter the dining room, on your left-hand side is the kitchen,  
25 is that right?

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THE WITNESS: Yes.

THE COURT: And the living room is just beyond the kitchen?

THE WITNESS: Yes.

THE COURT: Kind of right-hand?

THE WITNESS: The kitchen.

THE COURT: The kitchen, all right.

From the living room is there a hallway?

THE WITNESS: From the living room?

THE COURT: Yes.

THE WITNESS: No, it is just a little foyer from the kitchen back.

THE COURT: From the kitchen back there is a little foyer?

THE WITNESS: Yes.

THE COURT: How many bedrooms are there?

THE WITNESS: There are three.

THE COURT: There are three bedrooms --

THE WITNESS: One at the front, one off from the bathroom and then the one straight to the back.

MR. SIEGEL: If I could interrupt one second, I have a diagram of the apartment, a diagram which I and the accused in this case compiled. Even though it is the attorney's work product, I would be willing to submit it to



the Court for your inspection and perusal.

THE COURT: I will tell you what, if you would like to, if this witness will identify it as a diagram that she would make if she was going to make a diagram, that is fine.

Why don't you take a look at that? There is no need for formalism.

Is this the way it looks?

MR. SIEGEL: This being the entrance to the apartment (indicating).

THE WITNESS: Yes.

THE COURT: All right, we will have this marked as Defendant's Exhibit A.

Do you object to it, Mr. Fortuin?

MR. FORTUIN: No, we don't object.

THE COURT: All right, admitted in evidence.

(Defendant's Exhibit A received in evidence.)

Q Will you make an x on there in the bedroom in which you were when these events occurred?

THE COURT: Do you have a colored pencil?

MR. FORTUIN: Yes.

THE COURT: All right, we have an orange pen being offered to the witness.

A The last bedroom from the bathroom in the back.

MR. SIEGEL: Your Honor, can I be of some assistance? This is the bathroom over there.

THE COURT: Sure.

THE WITNESS: That is the bathroom.

MR. SIEGEL: This is the kitchen.

THE WITNESS: I don't know how to follow no diagrams.

THE COURT: I will tell you what, Ma'am, there was one bathroom and there was one bedroom opposite it, right?

THE WITNESS: Right.

THE COURT: Were you in that bedroom?

THE WITNESS: No, the one in the back.

THE COURT: The one in the back, all right.

THE WITNESS: Which one is that?

THE COURT: Unfortunately, I cannot figure out the diagram either at this point.

Go ahead, Counsellor.

MR. SIEGEL: This is the bathroom and this is the kitchen and this is the dining area. This is the living room and there is a bedroom there, you see, and this is the bedroom that connects to the bathroom and this is the bedroom opposite the bathroom.

THE WITNESS: The one back.



1  
2 THE COURT: So the one next to the bathroom is  
3 the one that you say is the one in back, is that correct?

4 THE WITNESS: The one that is opposite the bath-  
5 room I wasn't in, but the one in the back.

6 THE COURT: Okay, all right. That one, I gather,  
7 is that correct?

8 I didn't draw the diagram.

9 Counsellor, is that the back bedroom?

10 MR. SIEGEL: I have never seen the back bedroom  
11 and I would have to make known to the Court that the  
12 diagram is not really to scale.

13 THE COURT: I am not insisting that you be an  
14 architect, but that has been indicated to me to be the  
15 back bedroom, the bedroom hearest the bathroom.

16 All right. Fine.

17 Q So you do believe that you were in this bedroom.  
18 I know Mr. Siegel believes you were there. Is that the  
19 room you think you were in?

20 A Yes, the last bedroom.

21 Q So you were in the very last bedroom which is down  
22 a hall after the bathroom and after the kitchen, when the  
23 men entered the apartment?

24 A Yes.  
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Q What were you doing in the bedroom?

A Getting the records.

Q Were you sitting down, were you standing up?

A Sitting down in the chair.

Q Which way was the chair facing?

A To the window.



2 Q To the window, not toward the hallway?

3 A No.

4 Q So that when the officers entered you couldn't  
5 see them, you didn't know what they did?

6 A When I heard the door, I turned around.

7 Q And did you come out of the bedroom?

8 A No, I stayed right there and looked out. They  
9 saw me looking out.

10 Q Okay.

11 Then you testified on your direct examination  
12 that you then saw them arrest the defendant, is that right?

13 A Yes.

14 Q Where was he when they arrested him?

15 A They was coming up the hall. I thought they was  
16 coming into the room where I was. They stopped at the  
17 bathroom.

18 Q Did they enter the bathroom?

19 A I don't think so, I am not sure.

20 Q You couldn't see into the bathroom?

21 A No.

22 Q So you don't know what happened when they arrested  
23 the defendant?

24 A I couldn't see into the bathroom, but I saw when  
25 they had him in the bathroom, telling him to put his hands

up, in the doorway of the bathroom.

Q Did you look into the bathroom at all after the arrest?

A No, they told me to go in the living room and sit.

Q So you don't know whether there was any tinfoil in the living room?

A No.

Q Immediately after that they asked you to go into the living room?

A They told me to go into the living room and sit.

Q You sat in the living room?

A Yes. I sat on the loveseat and the kids was on the couch.

Q And you remained there until the time the officers left, is that correct?

A Until they had the lady come to search me. And then we stayed because the other officer was sitting down, told us not to move.

Q From your position in the living room, could you see anything that went on in the back bedroom?

A No, they was in the room, with the door closed.

Q So you have no idea what happened in that room?

A No, I don't.



1           Q     Now, you indicated that the officers came out  
2  
3     and they looked in some of the furniture, is that correct?

4           A     Yes.

5           Q     Now, prior to that had Mrs. Springer come out and  
6     gone to the furniture?

7           A     No.

8           Q     You don't recall Mrs. Springer coming out and  
9     getting a bag out of the sofa or something of that sort?

10          A     No, I don't.

11          Q     Do you remember seeing any money that evening?

12          A     No, I don't.

13          Q     Now, you also indicated in your direct examination  
14     that you saw them look inside of a cabinet, is that right?

15          A     Yes.

16          Q     And you stated it was a glass cabinet?

17          A     I said they looked into the cabinets and into  
18     the closet, a glass closet.

19          Q     So you could see inside the cabinet without opening  
20     the doors?

21          A     No, it was just made of sliding doors.

22          Q     Did you see the officers move any furniture that  
23     evening?

24          A     They moved the stuff out of the closet, they did.

25          Q     Did they move any furniture?

1 A No, I didn't see no furniture.

2 Q When you first came into the apartment did you  
3 have occasion to look at the table?  
4

5 A No. I came back to the bedroom.

6 Q On your way back to the bedroom did you look at  
7 the table to see what was on it?

8 A No.

9 Q So you have no idea whatsoever?

10 A No.

11 MR. FORTUIN: I have no further questions.

12 THE COURT: Any redirect?

13 MR. SIEGEL: Yes.

14 REDIRECT EXAMINATION

15 BY MR. SIEGEL:

16 Q On the evening when you were in the Springer apart-  
17 ment, did you see tinfoil or white powdery substances in  
18 the kitchen at all?

19 A No, I didn't.

20 Q Did you see it anywhere in the apartment?

21 A No.

22 MR. SIEGEL: Nothing further, your Honor.

23 MR. FORTUIN: No further questions.

24 THE COURT: All right, Mrs. Barner, you may step  
25 down.

(Witness excused.)



1  
2 THE COURT: All right, counsel, do you have any  
3 other witnesses?

4 MR. SIEGEL: Your Honor, I have one further  
5 piece of evidence which I would like to place before the  
6 Court, and if it is acceptable to the U. S. Attorney, I will  
7 do it.

8 If not, I may have to call Mr. Phillips to the  
9 stand. It involves, well, the underlying basis for this  
10 warrant, and I would state, I have had a conversation with  
11 Mr. Phillips today, and we have agreed on a set of facts.

12 If it is permissible, if I may give this state of  
13 facts, and if Mr. Phillips objects--

14 THE COURT: All right.

15 Are you worried about the phraseology of it?

16 MR. SIEGEL: Yes.

17 THE COURT: We will work it out as it goes along.

18 MR. FORTUIN: My concern is, are we going into  
19 the underlying causes for the warrant?

20 THE COURT: I don't know. Go ahead, Mr. Siegel.

21 MR. SIEGEL: Your Honor, the warrant in question  
22 was issued on December 3rd, 1973. The warrant was issued  
23 apparently for Mr. Springer's failure to appear. Now, based  
24 on my conversation with Mr. Phillips, and Mr. Witkowsky,  
25 Mr. Springer's previous attorney, I have been informed that

1 on December 3rd, 1973, the date when this warrant was in  
2 fact issued and executed upon there was no court hearing  
3 at which the accused had to be present. Apparently based  
4 on my conversation with the U. S. Attorney, Mr. Springer  
5 was requested to come to Mr. Phillips' office but not to  
6 appear at a set court hearing.  
7

8 This is the information I would like to place  
9 before the Court.

10 THE COURT: All right. We can do it simpler.

11 Mr. Clerk, do you have the indictment?

12 (Indictment handed to the Court.)

13 THE COURT: Counsel, the Clerk's minutes are on  
14 the indictment and that I assure you I will take judicial  
15 notice of.

16 MR. SIEGEL: All right. Fine.

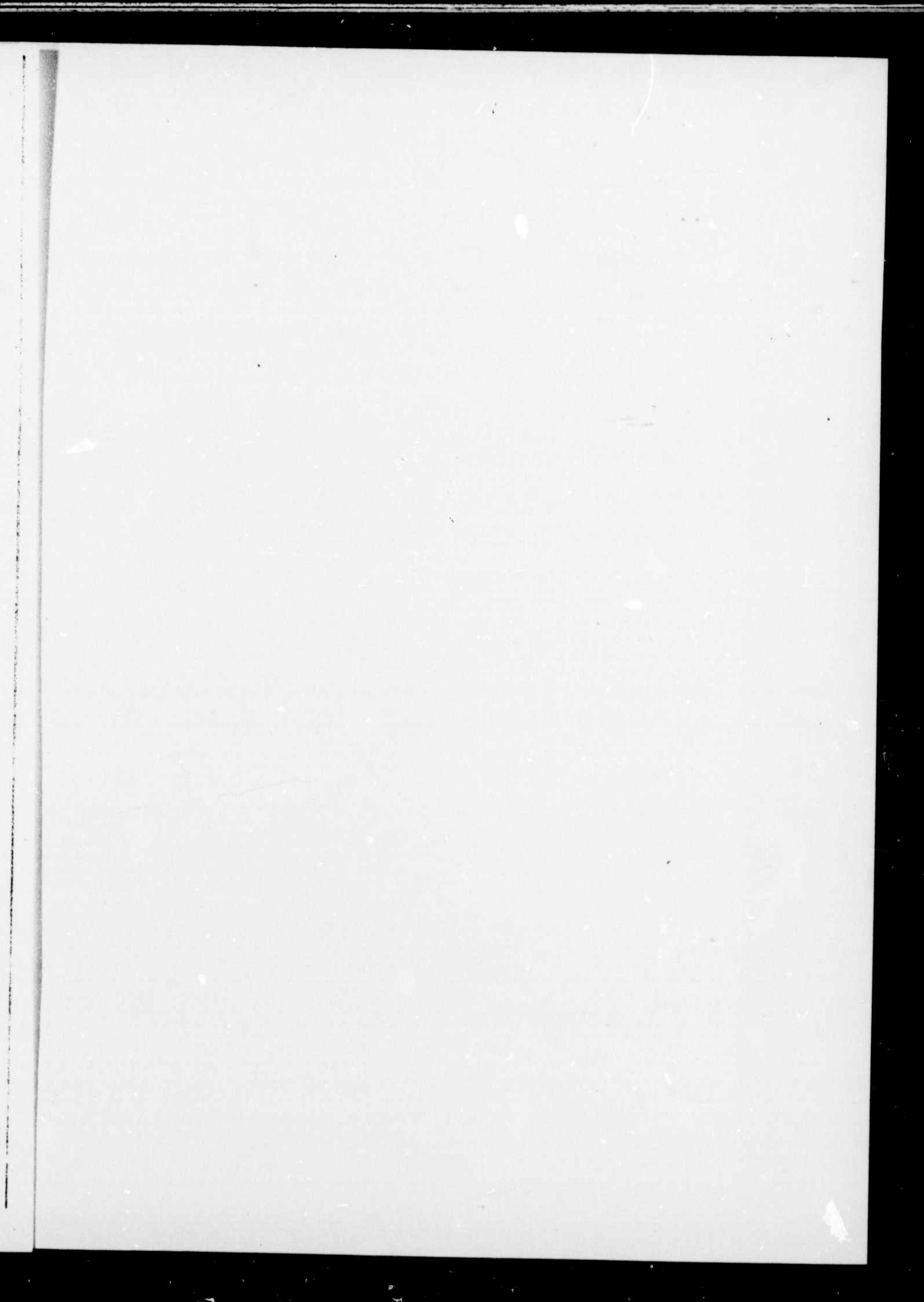
17 THE COURT: Counsel, apparently the Clerk's minutes  
18 were made on the prior indictment, the one that has been  
19 superseded. But I will get that. All right.

20 MR. SIEGEL: Fine.

21 THE COURT: Now, it is your contention taht on  
22 December 3rd, the day the warrant was issued, there was no  
23 court appearance required from Mr. Springer?

24 MR. SIEGEL: That is correct. Apparently based  
25 on my conversation with Mr. Phillips, it was requested that





1  
2 Mr. Springer come into his office to determine questions  
3 of representation, who was representing him and certain  
4 other matters but this wasn't to be a formal court hearing.

5 THE COURT: I will go by whatever the record  
6 shows.

7 Mr. Phillips, do you remember this? I don't  
8 remember it.

9 MR. PHILLIPS: I think that Mr. Siegel may be a  
10 little bit confused by what I told him earlier today.

11 I didn't say that we had sent a telegram for him  
12 to appear at my office. We have copies of the telegram.  
13 I think they should be made part of the record. They  
14 reflect as to all of the telegrams that were sent, of  
15 which there are three to Mr. Springer, they each directed  
16 him to appear in Courtroom 519 where your Honor was as-  
17 signed during that period of time, not to my office.

18 THE COURT: All right. You sent telegrams out,  
19 and the question was a question of representation for  
20 Mr. Springer, is that correct?

21 MR. PHILLIPS: Well, what occurred was, your Honor  
22 held a pretrial conference on November 16th.



1  
2 THE COURT: I remember that.

3 MR. PHILLIPS: And counsel were notified, and  
4 a telegram was sent to Mr. Springer on November the 14th,  
5 because no attorney had filed a notice of appearance on  
6 behalf of Mr. Springer.

7 Mr. Springer did not appear on the 16th, nor did  
8 an attorney appear on his behalf. As a result, with your  
9 Honor's permission, I sent a telegram directing Mr. Springer  
10 to appear on November 26th. At that time, he did appear,  
11 and that was the time that he appeared an hour and a half  
12 late, without an attorney. He said that he was represented  
13 by a man named Morskosky, an attorney in the Bronx, and I  
14 told Mr. Springer to have Mr. Morskosky get in touch with  
15 me, and he said he would.

16 Mr. Morskosky did not get in touch with me.  
17 Instead, I called him, after two or three days of not hearing  
18 from him, and he was rather vague as to whether or not he  
19 was going to represent Mr. Springer in this case, and I said,  
20 if he was, to file a notice of appearance.

21 No notice of appearance was filed on behalf of  
22 Mr. Springer, and November 30th came around, and when still  
23 nobody had come into the case on behalf of Mr. Springer, I  
24 sent him another telegram on that date, which was a Friday,  
25 to appear on Monday, December 3rd in Room 518, at 9:30 a.m.

and I indicated that if he did not appear a warrant of arrest would be issued for him, and it was based on his failure to appear on that date that I asked your Honor to issue a warrant of arrest, and that was the warrant that was being executed on the evening in question.

May we have these three copies of telegrams marked as an exhibit?

THE COURT: Mr. Siegel, do you object to it? I assure you --

MR. SIEGEL: Your Honor, my only objection would be -- is it the government's position now that they intend to offer proof of receipt of these telegrams?

THE COURT: I doubt it.

MR. FORTUIN: No.

THE COURT: Are you going to offer proof of receipt?

MR. PHILLIPS: No, your Honor.

THE COURT: All right.

Counsel, I assume that you would like to work out some kind of a potential stipulation. I won't make any suggestions.

MR. SIEGEL: Your Honor, I would have no objection to the items being entered to show that the telegrams were in fact sent, but as far as whether in fact they were



received by the defendant in this case, Mr. Springer, that is of course a crucial issue in this case, and of course there is no proof -- if the government has some proof, if they can show receipt of these telegrams, I would be more than happy to stipulate to their being received into the record.

THE COURT: If you have no objection to the fact that the telegrams were sent, I will take the telegrams into the record and admit them in evidence.

I believe it is your position -- and check me if I am wrong -- that the telegrams were in fact not delivered to Mr. Springer.

MR. SIEGEL: That's correct, your Honor.

THE COURT: And it is my recollection that at a bail hearing, Mr. Springer stood up and said something to the effect that -- I can't quote his exact words, but that in the South Bronx, where these telegrams were addressed to, the delivery of telegrams is not always sure and certain.

MR. SIEGEL: That's correct, your Honor.

(Government's Exhibit 2 was received in evidence.)

THE COURT: All right. Now we are at a position-- I have checked by the way, the clerk's minutes on Indictment 931, which show that on 12/3/73 I did order a bench warrant. It is my recollection -- I don't have the minutes of that

1 mpd4

57

2 here -- I did so on a representation by Mr. Phillips that  
3 had sent a telegram to the defendant to appear that day in  
4 connection with his representation.

5 Is that correct, Mr. Phillips?

6 MR. PHILLIPS: Yes, your Honor.

7 THE COURT: Do you gentlemen wish to argue or, if  
8 you will, delineate further the issues which you see to be  
9 present here?

10 Let me see if I can say them, and if I am wrong  
11 or if I have not hit it fully, then you tell me I am wrong.

12 It will be the government's contention that the  
13 bench warrant was properly issued. It will be the govern-  
14 ment's contention that the bench warrant was on its face  
15 probable cause for the arrest of John Springer. It will be  
16 the government's contention that a search incident to that  
17 arrest was proper.

18 The defendant may contend -- check me if I am  
19 wrong -- that the issuance of the bench warrant was improper  
20 in other words, that there was insufficient basis on that  
21 date to issue a bench warrant, and because of that, that the  
22 execution of the bench warrant was also improper.

23 More particularly, I believe that the defense  
24 contends that the search which was conducted after the  
25 arrest of the defendant was so wide-spread that it was not



really incident to the arrest.

Have I phrased the issues properly?

MR. SIEGEL: Yes, your Honor, except for one thing.

THE COURT: Surely. Go ahead.

MR. SIEGEL: That issue deals with a portion of my moving papers in this case, and that is on the issue of relevancy. The Court has ruled, yesterday, that the issue of relevancy is not proper at this time. This was in relation to another motion to suppress currently under way. Therefore, I would reserve any right I may have to raise the issue of relevancy to a future time without waiving --

THE COURT: Oh, surely. I don't want you to waive that at all. I am relatively certain that on the trial of this case you will object to the relevancy, if I don't suppress the evidence.

Now, I assume also, Counsellor, that you are not waiving the requirement, if there be a requirement, that I make findings of fact and conclusions of law.

MR. SIEGEL: That's correct. I am not waiving that.

THE COURT: I don't know if you have the right, but I don't want you to waive it, anyway.

It is my habit that I do not make particularized, numbered findings of fact. I prefer to do it in opinion form.

1  
2 It makes for two things: one, it makes the reading a little  
3 easier; two, it makes the understanding a little easier as  
4 to why I did things.

5 MR. ENGEL: It is further the government's con-  
6 tention, your Honor, that the seizure of the heroin and the  
7 other paraphernalia seized at the apartment were not only  
8 incident to the arrest of John Springer and were therefore  
9 proper but also fell into the view of the agents when they  
10 entered, and on that basis were proper to be seized as  
11 contraband and evidence.

12 THE COURT: I understand that. Is there anything  
13 else?

14 MR. SIEGEL: Nothing further, your Honor, for the  
15 defense.

16 THE COURT: All right. Gentlemen, we have ten-  
17 tatively, at least, scheduled the trial for Monday, and I  
18 have agreed to decide all motions by Friday. You have added  
19 to my burden, but it is a burden which I undertook when I  
20 took the oath of office, so I guess I am just stuck with it.

21 I do appreciate, however, the clarity and the  
22 timeliness and the proper execution of the hearing by both  
23 sides.

24 - - -  
25



WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
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Defendant

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